

HOUSE BILL No. 5435

January 27, 2004, Introduced by Reps. Hummel, Woronchak, Stahl, Taub, Vander Veen, Zelenko, Julian, Wojno, Shaffer, Amos, Steil, Mortimer, Howell, Voorhees, Plakas, Middaugh, Kooiman, Dennis, Robertson, Pappageorge, Minore, Pumford, Nofs, Richardville, Ehardt, LaSata, Hager, Garfield, Caul, Stakoe, Woodward, DeRossett, Ruth Johnson, Palmer, Shackleton, Meyer, Koetje, Stewart, Caswell, Nitz, Milosch, Tabor, Farhat, Gaffney, Ward, Hune, Van Regenmorter, Vagnozzi, Spade, O'Neil, Jamnick, Murphy, Moolenaar, Huizenga, Walker and Palsrok and referred to the Committee on Health Policy.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by amending the title, as amended by
2002 PA 304, and by adding chapter 37.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to revise, consolidate, and classify the laws
3 relating to the insurance and surety business; to regulate the
4 incorporation or formation of domestic insurance and surety
5 companies and associations and the admission of foreign and alien
6 companies and associations; to provide their rights, powers, and
7 immunities and to prescribe the conditions on which companies and
8 associations organized, existing, or authorized under this act
9 may exercise their powers; to provide the rights, powers, and
10 immunities and to prescribe the conditions on which other

1 persons, firms, corporations, associations, risk retention
2 groups, and purchasing groups engaged in an insurance or surety
3 business may exercise their powers; to provide for the imposition
4 of a privilege fee on domestic insurance companies and
5 associations and the state accident fund; to provide for the
6 imposition of a tax on the business of foreign and alien
7 companies and associations; to provide for the imposition of a
8 tax on risk retention groups and purchasing groups; to provide
9 for the imposition of a tax on the business of surplus line
10 agents; to provide for the imposition of regulatory fees on
11 certain insurers; to provide for assessment fees on certain
12 health maintenance organizations; to modify tort liability
13 arising out of certain accidents; to provide for limited actions
14 with respect to that modified tort liability and to prescribe
15 certain procedures for maintaining those actions; to require
16 security for losses arising out of certain accidents; to provide
17 for the continued availability and affordability of automobile
18 insurance and homeowners insurance in this state and to
19 facilitate the purchase of that insurance by all residents of
20 this state at fair and reasonable rates; to provide for certain
21 reporting with respect to insurance and with respect to certain
22 claims against uninsured or self-insured persons; to prescribe
23 duties for certain state departments and officers with respect to
24 that reporting; to provide for certain assessments; to establish
25 and continue certain state insurance funds; to modify and clarify
26 the status, rights, powers, duties, and operations of the
27 nonprofit malpractice insurance fund; to provide for the

1 departmental supervision and regulation of the insurance and
2 surety business within this state; to provide for regulation over
3 worker's compensation self-insurers; to provide for the
4 conservation, rehabilitation, or liquidation of unsound or
5 insolvent insurers; to provide for the protection of
6 policyholders, claimants, and creditors of unsound or insolvent
7 insurers; to provide for associations of insurers to protect
8 policyholders and claimants in the event of insurer insolvencies;
9 to prescribe educational requirements for insurance agents and
10 solicitors; to provide for the regulation of multiple employer
11 welfare arrangements; **to provide for the regulation of pharmacy**
12 **benefit managers;** to create an automobile theft prevention
13 authority to reduce the number of automobile thefts in this
14 state; to prescribe the powers and duties of the automobile theft
15 prevention authority; to provide certain powers and duties upon
16 certain officials, departments, and authorities of this state; to
17 provide for an appropriation; to repeal acts and parts of acts;
18 and to provide penalties for the violation of this act.

19 **CHAPTER 37 PHARMACY BENEFIT MANAGERS**

20 **Sec. 3701. As used in this chapter:**

21 (a) "Benefit plan" or "plan" means a medical, surgical, or
22 health care benefit plan and may include coverage under a group,
23 nongroup, or individual policy, certificate, or contract issued
24 by a carrier.

25 (b) "Carrier" means any of the following:

26 (i) An insurer regulated under this act.

27 (ii) A health care corporation regulated under the nonprofit

1 health care corporation reform act, 1980 PA 350, MCL 550.1101 to
2 550.1704.

3 (iii) A health maintenance organization regulated under this
4 act.

5 (c) "Person" means an individual, sole proprietorship,
6 partnership, corporation, association, or any other legal
7 entity.

8 (d) "Pharmacy benefit manager" or "PBM" means a person and
9 any wholly or partially owned subsidiary of the person that
10 administers the prescription drug or device portion of a benefit
11 plan. Pharmacy benefit manager includes a carrier or employer
12 sponsoring a benefit plan.

13 Sec. 3703. (1) A person shall not operate as a pharmacy
14 benefit manager without obtaining and maintaining a certificate
15 of authority under this chapter.

16 (2) A PBM is subject to this chapter in the following
17 instances:

18 (a) The PBM is domiciled in this state.

19 (b) The PBM has its principal administrative office or
20 principal headquarters located in this state.

21 (c) The PBM solicits a plan or sponsor of a plan or provides
22 administrative services to a plan or sponsor of a plan, which
23 plan or sponsor is either domiciled in this state or has its
24 principal headquarters or principal administrative office in this
25 state.

26 (d) The PBM provides substantial administrative services to
27 a carrier for the carrier's business in this state.

1 (4) Each PBM shall transact its business under its own
2 name. A PBM shall not be permitted to do business in this state
3 under a name that is the same as or that closely resembles the
4 name of a PBM that is authorized to do business under the laws of
5 this state.

6 Sec. 3705. (1) An application for a certificate of
7 authority to operate as a PBM shall be in a form prescribed by
8 the commissioner, shall be verified by an officer or authorized
9 representative of the PBM, and shall include all of the
10 following:

11 (a) All basic organizational documents of the PBM, including
12 the articles of incorporation, bylaws, articles of association,
13 trade name certificate, and other similar documents and all
14 amendments to those documents.

15 (b) The names, addresses, official positions, and
16 professional qualifications of the individuals who are
17 responsible for the conduct of the affairs of the PBM, including
18 all members of the board of directors, board of trustees,
19 executive committee, or other governing board or committee; the
20 officers and shareholders owning stock representing 10% or more
21 of the voting shares of the PBM in the case of a corporation; the
22 partners or members in the case of a partnership or association;
23 and any other person who exercises control or influence over the
24 affairs of the PBM.

25 (c) A description of the PBM, its services, facilities, and
26 personnel.

27 (d) The name and address of the agent for service of process

1 in the state.

2 (e) Recent financial statements showing the PBM's assets,
3 liabilities, and sources of financial support sufficient in the
4 opinion of the commissioner, to show financial viability of the
5 PBM. If the PBM's financial affairs are prepared by independent
6 public accountants, a copy of the most recent regular financial
7 statement shall satisfy this requirement unless the commissioner
8 determines that additional or more recent financial information
9 is required for the proper administration of this chapter.

10 (f) Such other information as the commissioner may
11 reasonably require.

12 (2) Within 30 days following any significant modification of
13 information submitted with the application for a certificate of
14 authority, a PBM shall file a notice of the modification with the
15 commissioner.

16 Sec. 3707. (1) The commissioner shall issue a certificate
17 of authority to operate as a PBM if the commissioner is satisfied
18 that the PBM has adequate facilities, personnel, and managers to
19 act as a PBM and otherwise satisfies this chapter.

20 (2) If the commissioner disapproves an application for a
21 certificate of authority, he or she shall notify the applicant in
22 writing of the reasons for the disapproval.

23 (3) A PBM shall continue to meet the conditions required
24 under subsection (1) after the certificate of authority is
25 issued.

26 Sec. 3709. (1) The commissioner shall collect, and the
27 persons affected shall pay to the commissioner, the following

1 fees:

2 (a) Filing fee to accompany application for PBM's
3 certificate of authority..... \$500.00.

4 (b) Filing fee for annual statement of a PBM, each
5 year..... \$500.00.

6 (2) Fees paid under this section shall be designated for the
7 office of financial and insurance services to cover the
8 additional costs incurred as a result of this chapter.

9 Sec. 3711. Each PBM acting within this state shall
10 annually, on or before March 1, prepare under oath and deposit
11 with the commissioner a statement concerning its affairs upon a
12 form provided by the commissioner. The annual statement shall be
13 filed on or before March 1 of the year following that covered by
14 the statement. Upon request and for good cause shown, the
15 commissioner may grant to any PBM a reasonable extension of time
16 not to exceed 30 days within which the statement shall be filed.
17 The PBM shall pay the filing fee under section 3709.

18 Sec. 3713. The commissioner shall have the same authority
19 with respect to a PBM as he or she does with respect to an
20 insurance agency or agent under this act, including, but not
21 limited to, the rights of examination, suspension, revocation,
22 and limitation of authority, and liquidations and receiverships.

23 Sec. 3721. A pharmacy or pharmacist's affiliation or
24 participation with a carrier or in a network or panel shall not
25 be terminated because of efforts by the pharmacy or pharmacist to
26 invoke its rights under contract.

27 Sec. 3723. (1) If the commissioner finds that a person has

1 violated this chapter, after an opportunity for a hearing
2 pursuant to the administrative procedures act of 1969, 1969
3 PA 306, MCL 24.201 to 24.328, the commissioner shall reduce his
4 or her findings and decision to writing and shall issue and cause
5 to be served upon the person charged with the violation a copy of
6 the findings and an order requiring the person to cease and
7 desist from the violation. In addition, the commissioner may
8 order any of the following:

9 (a) Payment of a civil fine of not more than \$500.00 for each
10 violation. However, if the person knew or reasonably should have
11 known that he or she was in violation of this chapter, the
12 commissioner may order the payment of a civil fine of not more
13 than \$250,000.00 for each violation. A fine collected under this
14 subdivision shall be turned over to the state treasurer and
15 credited to the general fund of the state.

16 (b) The suspension or revocation of the person's license or
17 certificate of authority to do business in this state.

18 (2) The commissioner may by order, after notice and
19 opportunity for hearing, reopen and alter, modify, or set aside,
20 in whole or in part, an order issued under this section, if in
21 the opinion of the commissioner conditions of fact or of law have
22 changed to require that action, or if the public interest
23 requires that action.

24 (3) This section does not preclude the commissioner from
25 imposing any other penalties provided in this act.

26 Sec. 3725. The commissioner shall submit to the legislature
27 on or before April 1, 2007 a report detailing the impact of this

1 chapter on plans and individuals covered by plans, carriers, and
2 PBMs. The report shall also estimate the total financial impact
3 on the state of Michigan during the preceding legislative
4 biennium.

5 Enacting section 1. This amendatory act does not take
6 effect unless all of the following bills of the 92nd Legislature
7 are enacted into law:

8 (a) Senate Bill No. _____ or House Bill No. 5438 (request
9 no. 04344'03).

10 (b) Senate Bill No. _____ or House Bill No. 5437 (request
11 no. 04345'03*).

12 (c) Senate Bill No. _____ or House Bill No. 5436 (request
13 no. 05814'03).

14 (d) House Bill No. 4987.